

**Introduced by Senator Lewis**

February 25, 1999

---

An act to amend Section 706.030 of the Code of Civil Procedure, and to add Sections 17285.5 and 24385.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 884, as introduced, Lewis. Personal income and bank and corporation taxes: deductions: employer expenses.

Existing law sets forth procedures for the enforcement of judgments, including procedures for using an earnings withholding order to collect delinquent amounts payable under a judgment for the support of a child, spouse, or former spouse of the judgment debtor.

The Personal Income Tax Law and the Bank and Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws, including a deduction for trade or business expenses.

This bill would expressly authorize a deduction under those laws for the expenses paid or incurred during the taxable or income year by a taxpayer in processing an earnings withholding order for support. The bill would make related changes.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

1 SECTION 1. Section 706.030 of the Code of Civil  
2 Procedure is amended to read:

3 706.030. (a) A “withholding order for support” is an  
4 earnings withholding order issued on a writ of execution  
5 to collect delinquent amounts payable under a judgment  
6 for the support of a child, or spouse or former spouse, of  
7 the judgment debtor. A withholding order for support  
8 shall be denoted as such on its face.

9 (b) The district attorney may issue a withholding  
10 order for support on a notice of levy pursuant to Section  
11 11350.7 of the Welfare and Institutions Code to collect a  
12 support obligation.

13 (1) When the district attorney issues a withholding  
14 order for support, a reference in this chapter to a levying  
15 officer is deemed to mean the district attorney who issues  
16 the withholding order for support.

17 (2) Service of a withholding order for support issued  
18 by the district attorney may be made by first-class mail or  
19 in any other manner described in Section 706.101. Service  
20 of a withholding order for support issued by the district  
21 attorney is complete when it is received by the employer  
22 or a person described in paragraph (1) or (2) of  
23 subdivision (a) of Section 706.101, or if service is by  
24 first-class mail, service is complete as specified in Section  
25 1013.

26 (3) The district attorney shall serve upon the  
27 employer the withholding order for support, a copy of the  
28 order, and a notice informing the support obligor of the  
29 effect of the order and of his or her right to hearings and  
30 remedies provided in this chapter and in the Welfare and  
31 Institutions Code. The notice shall be accompanied by the  
32 forms necessary to obtain an administrative review and  
33 a judicial hearing and instructions on how to file the  
34 forms. Within 10 days from the date of service, the  
35 employer shall deliver to the support obligor a copy of the  
36 withholding order for support, the forms to obtain an  
37 administrative review and judicial hearing, and the  
38 notice. If the support obligor is no longer employed by the



1 employer and the employer does not owe the support  
2 obligor any earnings, the employer shall inform the  
3 district attorney that the support obligor is no longer  
4 employed by the employer.

5 (4) An employer who fails to comply with paragraph  
6 (3) shall be subject to a civil penalty of five hundred  
7 dollars (\$500) for each occurrence.

8 (5) The district attorney shall provide for an  
9 administrative review to reconsider or modify the  
10 amount to be withheld for arrearages pursuant to the  
11 withholding order for support, if the support obligor  
12 requests a review at any time after service of the  
13 withholding order. The review shall be completed within  
14 15 working days after the request is received by the  
15 district attorney. The district attorney shall notify the  
16 employer if the review results in any modifications to the  
17 withholding order for support. If the district attorney  
18 cannot complete the administrative review within 15  
19 working days, the district attorney shall notify the  
20 employer to suspend withholding any disputed amount  
21 pending the completion of the review and the  
22 determination by the district attorney.

23 (6) Nothing in this section prohibits the support  
24 obligor from seeking a judicial determination of  
25 arrearages pursuant to subdivision (c) of Section 11350.8  
26 of the Welfare and Institutions Code or from filing a  
27 motion for equitable division of earnings pursuant to  
28 Section 706.052 either prior to or after the administrative  
29 review provided by this section. Within five business days  
30 after receiving notice of the obligor having filed for  
31 judicial relief pursuant to this section, the district  
32 attorney shall notify the employer to suspend  
33 withholding any disputed amount pending a  
34 determination by the court. The employer shall then  
35 adjust the withholding within not more than nine days of  
36 receiving the notice from the district attorney.

37 (c) Notwithstanding any other provision of this  
38 chapter:

39 (1) An employer shall continue to withhold pursuant  
40 to a withholding order for support until the earliest of the

1 dates specified in paragraph (1), (2), or (3) of subdivision  
2 (a) of Section 706.022, except that a withholding order for  
3 support shall automatically terminate one year after the  
4 employment of the employee by the employer  
5 terminates.

6 (2) A withholding order for support has priority over  
7 any other earnings withholding order. An employer upon  
8 whom a withholding order for support is served shall  
9 withhold and pay over earnings of the employee pursuant  
10 to ~~such~~ *that* order notwithstanding the requirements of  
11 another earnings withholding order.

12 (3) Subject to paragraph (2) and to Article 3  
13 (commencing with Section 706.050), an employer shall  
14 withhold earnings pursuant to both a withholding order  
15 for support and another earnings withholding order  
16 simultaneously.

17 (4) An employer who willfully fails to withhold and  
18 forward support pursuant to a valid earnings withholding  
19 order for support issued and served upon the employer  
20 pursuant to this chapter is liable to the support obligee,  
21 as defined in Section 5214 of the Family Code, for the  
22 amount of support not withheld, forwarded, or otherwise  
23 paid to the support obligee.

24 (5) Notwithstanding any other provision of law, an  
25 employer shall send all earnings withheld pursuant to a  
26 withholding order for support to the levying officer or the  
27 Child Support Centralized Collection and Distribution  
28 Unit as described in Section 11475.4 of the Welfare and  
29 Institutions Code within the time period specified by  
30 federal law.

31 (6) Once the Child Support Centralized Collection  
32 and Distribution Unit as described in Section 11475.4 of  
33 the Welfare and Institutions Code is operational, all  
34 support payments made pursuant to an earnings  
35 withholding order shall be made to that unit.

36 (7) Earnings withheld pursuant to an earnings  
37 withholding order for support shall be credited toward  
38 satisfaction of a support judgment as specified in Section  
39 695.221.



1     (d) *An employer shall be allowed a deduction in*  
2 *computing income that is subject to personal income or*  
3 *bank and corporation taxes, pursuant to Section 17285.5*  
4 *or 24385.5 of the Revenue and Taxation Code, for any*  
5 *expenses involved in processing an earnings withholding*  
6 *order for support pursuant to this section.*

7     SEC. 2. Section 17285.5 is added to the Revenue and  
8 Taxation Code, to read:

9     17285.5. There shall be allowed as a deduction to a  
10 taxpayer, as an ordinary and necessary expense paid or  
11 incurred during the taxable year in carrying on any trade  
12 or business (as provided in Section 162(a) of the Internal  
13 Revenue Code), the expenses involved in processing an  
14 earnings withholding order for support, as required by  
15 Section 706.030 of the Code of Civil Procedure.

16     SEC. 3. Section 24385.5 is added to the Revenue and  
17 Taxation Code, to read:

18     24385.5. There shall be allowed as a deduction to a  
19 taxpayer as an ordinary and necessary expense paid or  
20 incurred during the income year in carrying on any trade  
21 or business (as provided in Section 162(a) of the Internal  
22 Revenue Code), the expenses involved in processing an  
23 earnings withholding order for support, as required by  
24 Section 706.030 of the Code of Civil Procedure.

25     SEC. 4. This act provides for a tax levy within the  
26 meaning of Article IV of the Constitution and shall go into  
27 immediate effect.

